



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276

Mary A. Gade, Director

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)

BATAVIA GROUNDWATER)
CONTAMINATION)
LPC #0894135101)

EPA # 444-96 HAZ

BATAVIA CONCRETE, INC., an)
Illinois Corporation,)
EAGLE CONCRETE, INC., an)
Illinois Corporation,)
Melvin Johnson DBA JOHNSON)
EXCAVATING COMPANY, KAPAT)
INDUSTRIES, INC., a former)
Illinois Corporation,)

NOTICE PURSUANT OF SECTIONS 4(q) AND 58.9(b) OF THE ENVIRONMENTAL PROTECTION ACT

I. GENERAL

This Notice is issued pursuant to the authority vested in the Illinois Environmental Protection Agency ("Illinois EPA") by Sections 4(q) and 58.9(b) of the Environmental Protection Act, ("Act"), 415 ILCS 5/4(q) and 415 ILCS 5/58.9(b). Batavia Concrete, Inc. ("Batavia Concrete"), Eagle Concrete, Inc. ("Eagle Concrete"), Melvin Johnson, DBA Johnson Excavating Company and Kapat Industries, Inc. ("Kapat"), ("Parties") shall undertake all actions required by, and in accordance with the terms and conditions of, this Notice. The term "Site" is defined for purposes of this Notice as the facility described in Section III(A) of this Notice. Failure by the Parties to undertake these actions may result in sanctions including, but not limited to, the sanctions described in Section XIX of this Notice.

II. OBJECTIVES

The objectives of the Illinois EPA in issuing this notice are: 1) to provide notice to the Parties of a release or substantial threat of release of hazardous substances or pesticides at or attributable to the Site and of the necessity to perform remedial action; 2) to identify appropriate actions for response to the release or the substantial threat of a release of hazardous substances or pesticides at or attributable to the Site; and 3) to provide an opportunity for the Parties to perform such response actions. All

EPA Region 5 Records Ctr.



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activities conducted pursuant to this Notice are subject to approval by the Illinois EPA and shall be substantially consistent with Title XVII of the Act and implementing regulations.

III. FINDINGS OF FACT

The following constitutes the facts upon which this Notice is based:

A. SITE DESCRIPTION

Routine water sampling by the Illinois Department of Public Health ("IDPH") in 1996 identified groundwater contamination in several semi-private and non-community public service wells in Batavia, Illinois. Subsequent investigation by Illinois EPA and IDPH have defined the area where groundwater contaminated with Vinyl Chloride and other volatile organic contaminants ("VOCs") has been detected. The surface area overlying the contaminated groundwater is roughly bounded by the Fox River on the West, Laurel Street on the North, Illinois Route 25 on the East and Bond Drive on the South and is known as the Batavia Groundwater Contamination Site ("Site"). See map, attachment I.

B. IDENTITIES OF POTENTIALLY RESPONSIBLE PARTIES

1. Batavia Concrete is located at 1321 S. River St., Batavia, Illinois. As set forth in greater detail in Section III(C)(3), groundwater samples collected at Batavia Concrete revealed high levels of VOC contamination, and air samples collected in the office building contained vinyl chloride.
2. Eagle Concrete is located at 1305 S. River St., Batavia, Illinois. As set forth in greater detail in Section III(C)(4), soil samples collected at Eagle Concrete revealed high levels of VOC contamination.
3. Johnson Excavating Co., located at 575 S. River St., Batavia, Illinois, is owned and operated by Melvin Johnson. In 1971 and 1972 Illinois EPA inspections documented the Johnson property had been used as an unpermitted dump. More recently oily waste has been noted near the property line between Johnson Excavating Co. and the adjacent property to the south which is occupied by the Montessori Academy.
4. Kapat Industries operates a warehouse and distribution center at 557 S. River St., Batavia, Illinois. It formerly was located at the site at which Batavia Concrete is now

located, at 1321 S. River Road, Batavia, Illinois. The carpet cleaning industry, as a whole, frequently uses Tetrachloroethylene and other VOCs in the process of their work.

C. DEMONSTRATED PRESENCE OF HAZARDOUS SUBSTANCES OR PESTICIDES AT THE SITE

1. The investigation performed by the Illinois EPA in 1997 indicates that contamination exists in unconsolidated material (above bedrock) and in both Silurian and Cambro-Ordovician bedrock groundwater aquifers. Therefore, both the 700' deep aquifer (the St. Peter Sandstone in the Cambro Ordovician), which is used for public water supply, and the 200' shallow Silurian Aquifer, used for private wells, are affected. The municipal water supply well and numerous private wells have been tested and no contamination has been found in any well currently used for drinking water.

The Illinois EPA investigation indicates that there are probably two or more sources of contamination. The contamination is not continuous throughout the site. The locations and depths at which contamination was detected vary considerably. One source of contamination appears to be near the North end of the site. Another source of contamination appears to be located at or close to Batavia Concrete and Eagle Concrete. Additional sources of contamination may also be present.

2. Samples collected at the Montessori Academy, located at 595 S. River St. Batavia, Illinois reveal low levels of VOC contamination in the private well formerly used for drinking water and higher levels of contamination in a monitoring well installed by the Illinois EPA. The private well contained Vinyl Chloride at 6.6 parts per billion ("ppb") and Cis-1,2-Dichloroethylene at 24 ppb. The monitoring well contained Vinyl Chloride at 550 ppb, Cis-1,2-Dichloroethylene at 2,280 ppb and significant levels of other VOCs. The school was using bottled water for drinking before the contamination was discovered in its well. It continues to use bottled drinking water. Air samples collected by IDPH in the school detected no air contamination volatilizing from well water pumped to toilets.

3. Samples collected at Batavia Concrete reveal high levels of VOC contamination in groundwater. Groundwater

samples contained Vinyl Chloride at 7,000 ppb, Cis-1,2-Dichloroethylene at 15,000 ppb, 1,1-dichloroethane at 690 ppb, Trichloroethylene at 1,200 ppb and significant levels of other VOCs. It uses bottled water for drinking. Air samples collected by IDPH in the office building also contained Vinyl Chloride, which indicates that contamination is volatilizing from the well water pumped to the toilet.

An additional problem at Batavia Concrete is the presence of a 715-foot deep well which hydraulically connects the highly contaminated shallow aquifer to the St. Peter Sandstone in the deeper aquifer, which is used for the public drinking water supply.

4. A soil sample collected at Eagle Concrete revealed high levels of VOC contamination in soil. The sample contained Carbon Tetrachloride at 3,900,000 ppb, Trichloroethylene at 5,900,000 ppb, Tetrachloroethylene at 110,000 ppb and significant levels of other VOCs. Additional soil samples contained low levels of VOCs and Polychlorinated Biphenyls (PCBs).

5. Groundwater samples collected at Funway Inc, 1335 River Street, Batavia, Illinois, a facility adjacent to Batavia Concrete, reveal high levels of VOC contamination. Water samples from monitoring wells on site contained Vinyl Chloride at 390 ppb, Cis-1,2-Dichloroethylene at 4,900 ppb, 1,1,1-Trichloroethane at 3,900 ppb, Trichloroethylene at 420 ppb, Benzene at 430 ppb, Toluene at 260 ppb, Xylene at 970 ppb, C3-substituted Benzenes at 1,700 ppb, C4-substituted Benzenes at 440 ppb and significant levels of other VOCs. City water supplied from municipal wells is used as Funway Inc's drinking water supply.

IV. CONCLUSIONS OF LAW

- A. The Site described in Section III(A) of this Notice is a facility as defined in Section 22.2(h)(1) of the Act, 415 ILCS 5/22.2(h)(1).
- B. Each of the Parties is a "person" as defined in Section 3.26 of the Act, 415 ILCS 5/3.26.
- C. Materials, wastes and constituents thereof at the Site are "hazardous substances" as defined in Section 3.14 of the Act, 415 ILCS 5/3.14, or "pesticides" as defined in Section 3.71 of the Act, 415 ILCS 5/3.71.

- D. The past, present or potential migration of hazardous substances or pesticides from the Site constitutes an actual or substantial threat of "release" as defined in Section 3.33 of the Act, 415 ILCS 5/3.33.
- E. The Parties are persons who may be liable for some or all costs of removal or remedial action incurred by the State of Illinois pursuant to Sections 22.2(f) and 58.9(a) of the Act, 415 ILCS 5/22.2(f) and 415 ILCS 5/58.9(a), for a release or substantial threat of a release of a hazardous substance or pesticide.
- F. Groundwater samples indicate contaminant concentrations exceeding standards in 35 Ill. Adm. Code Part 620 and objectives pursuant to 35 Ill. Adm. Part 742 Appendix B, Table E.

V. DETERMINATION

Based on the Findings of Fact and Conclusions of Law set forth above, the Illinois EPA has determined that the response actions identified in this Notice are appropriate to mitigate the release or substantial threat of a release of hazardous substances or pesticides at or from the Site.

VI. IDENTIFIED RESPONSE ACTION

The Parties shall furnish the necessary personnel, materials, services, facilities, and otherwise do all things necessary or appropriate to fully comply with the following provisions:

- A. Completion of all work identified in Attachment II to this Notice ("Scope of Work") fully in accordance with the terms and conditions of this Notice.
- B. Assurance that all engineering work performed pursuant to this Notice is fully documented and under the supervision and certification of a licensed professional engineer registered and in good standing in Illinois. All document certification shall be by indelibly inked signature over the author's typed full name, title, Illinois registration number, Illinois professional engineer's seal and the date of signature for the following statement:

I certify under penalty of law that this document, supporting documents, and all attachments were prepared under my direction or supervision. To the best of my

knowledge and belief, this document, supporting documents, and all attachments are true, accurate, and complete. I am aware that there are significant penalties for submitting false information or withholding material data, including the possibility of fine and imprisonment for knowing violations.

- C. Assurance that all geologic investigative work performed pursuant to this Notice is fully documented and under the supervision and certification of a licensed professional geologist registered and in good standing in Illinois. All document certification shall be by indelibly inked signature over the author's typed full name, title, Illinois registration number and the date of signature.
- D. Acquisition of express written approval by the Illinois EPA of all contractors, subcontractors, consultants, and laboratories used to conduct the work performed pursuant to this Notice prior to the initiation of such work.

VII. RESPONSE TO NOTICE AND OPPORTUNITY TO CONFER

- A. Each Party shall respond to the Illinois EPA in writing within thirty (30) days of the effective date of this Notice identifying the nature and extent of the corrective measures that such Party is willing to undertake to comply with the terms and conditions of this Notice. If any Party fails to so respond, the Illinois EPA will assume that such Party refuses to undertake these identified response actions and the Illinois EPA will proceed accordingly.

Each Party shall indicate the appropriate name, title, address and telephone number for further Illinois EPA contact with that Party in this matter.

- B. Except as otherwise indicated, all notifications required of the Parties by this Notice shall be sent to:

Sue Doubet, Project Manager
Remedial Project Management Section
Bureau of Land
Illinois Environmental Protection Agency
P.O. Box 19276
1021 N. Grand Avenue East
Springfield, Illinois 62794-9276

and to:

Donald L. Gimbel, Assistant Counsel,
Division of Legal Counsel
Illinois Environmental Protection Agency
1701 South First Avenue, 11th. Floor
Maywood, Illinois 60153

- C. The Parties shall provide to the Illinois EPA project manager identified in Section VII(B) of this Notice three (3) copies of all reports, notifications or other documents submitted to the Illinois EPA in compliance with this Notice. The Parties shall provide to the Illinois EPA Assistant Counsel identified in Section VII(B) of this Notice one copy of all reports, notifications, or other documents submitted to the Illinois EPA in compliance with this Notice. Additional copies shall be provided upon request of the Illinois EPA.
- D. If any Party has knowledge of any person not named in this Notice who may be liable for a release or substantial threat of a release of hazardous substances or pesticides at the Site, the Illinois EPA requests that the Party provide the identification of such other person and the factual basis for assumption of liability by such person under Sections 22.2(f) and 58.9 of the Act, 415 ILCS 5/22.2(f) and 415 ILCS 5/58.9.
- E. The response required by Section VII(A) of this Notice shall contain a status report of any discussions or negotiations with federal, state or local government authorities, or any voluntary action or involvement in a lawsuit regarding the Site or contamination attributable to the Site. A copy of this written response shall be provided to any other party involved in those discussions.
- F. The Illinois EPA extends to the Parties an opportunity to confer on any matters addressed in this Notice within thirty (30) days of the effective date of this Notice. A conference at the Illinois EPA's headquarters may be requested by any of the Parties through written request directed to the Illinois EPA Assistant Counsel named in Section VII(B) of this Notice. Such request may not delay the Parties' performance of the identified response action.

VIII. DESIGNATED PROJECT MANAGERS

The project manager for the Illinois EPA is identified in Section VII(B). The Parties shall designate a project manager prior to the initiation of any work or task required under Section VI of this

Notice. The project manager for the Parties shall be responsible for administering the performance of the Parties' obligations under this Notice. The Illinois EPA's project manager and the Parties' project manager shall ensure that all communications, coordination, report submittals, correspondence, approvals, and scheduling are directed, as appropriate, to the counterpart project manager.

The Illinois EPA may designate an on-scene coordinator to augment Illinois EPA supervision of Site Activities and compliance with the terms and conditions of this Notice. The on-scene coordinator is supervised by the Illinois EPA's project manager.

IX. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

The Parties shall make the results of all sampling, tests or other data generated by the Parties or on the Parties' behalf with respect to implementation of this Notice available to the Illinois EPA and shall submit such data upon request. The Illinois EPA shall similarly make available to the Parties the results of all sampling, tests, or other data regarding the Site generated by the Illinois EPA or on the Illinois EPA's behalf.

At the request of the Illinois EPA, the Parties shall allow split or duplicate samples to be taken by the Illinois EPA and its authorized representatives of any samples collected by the Parties with respect to the contamination at or attributable to the Site. The Parties shall notify the Illinois EPA not less than seven (7) calendar days in advance of any sample collection activities. Failure to so notify the Illinois EPA may invalidate the results of such sample analyses for the purposes of compliance with this Notice.

The Illinois EPA and any Illinois EPA authorized representative and the Illinois Attorney General's Office shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Parties in carrying out the terms of this Notice; conducting such tests as the Illinois EPA may deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to the Illinois EPA by the Parties. The Parties shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data in any way pertaining to work undertaken pursuant to this Notice. All persons with access to the Site pursuant to this Section of this Notice shall comply with an Illinois EPA-approved Site health and

safety plan.

X. RECORD PRESERVATION

The Parties shall preserve during the pendency of this Notice and for a minimum of six (6) years after its termination, all records and documents in the Parties' possession or in the possession of the Parties' divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. The Parties may fulfill this obligation by retention on microfilm or other comparable record keeping. Upon completion of this six (6) year period, the Parties shall notify the Illinois EPA thirty (30) days prior to the destruction of any such documents. Upon request, the Parties shall make available to the Illinois EPA such records or copies of such records at no cost to the Illinois EPA. Compliance with this Section shall not be construed to indicate a waiver of any applicable right or privilege.

XI. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Notice, including the completion of the work set forth in Section VI, the Parties are not released for liability, if any, for any costs of removal or remedial action incurred by the Illinois EPA at the Site beyond the scope of this Notice. The Illinois EPA reserves:

- A. The right to take any enforcement action pursuant to the Act or any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or of this Notice.
- B. All rights that it may have, including the Illinois EPA's right both to disapprove of work performed by the Parties and to request that the Parties perform tasks in addition to those required in this Notice. In the event that Parties decline to perform any additional tasks, the Illinois EPA reserves the right to undertake any such work.
- C. The right to undertake removal or remedial actions at any time.
- D. The right to seek reimbursement from the Parties thereafter for any and all costs incurred by the State of Illinois related to the release or threatened release of hazardous substances or pesticides at or attributable to the Site.

XII. ABATEMENT OF ENDANGERMENT

In the event that the Director of the Illinois EPA, or the Director's designated representative, determines that any activities or circumstances at the Site are creating an immediate and significant risk of endangerment to human health or the environment, the Director may issue a notice to cease further implementation of the identified response action. Where the Director halts any tasks for a specified period of time, the Parties may be given an additional amount of time to complete subsequent tasks. No such extension shall be allowed if any delay is attributable in whole or in part to the acts or omissions of any Party, its agents, employees, representatives, contractors or subcontractors. This additional time may not exceed the actual period during which identified response actions were halted by the Director. For purposes of the Notice, the designated representative of the Director includes the Illinois EPA's project manager and on-scene coordinator.

XIII. REIMBURSEMENT OF COSTS

The Illinois EPA shall submit to the Parties summary accountings and requests for reimbursement of all response and oversight costs incurred by the State of Illinois with respect to the Site for which each Party is liable. These accountings shall include costs incurred by the Illinois EPA as a result of a release or substantial threat of a release of hazardous substances or pesticides during current and prior State fiscal years including, but not limited to, response and oversight costs incurred by the Illinois EPA prior to the effective date of this Notice.

The Parties shall remit a certified check for the amount of the request reimbursement made payable to Treasurer-State of Illinois, with a notation for deposit in the Illinois Hazardous Waste Fund, within thirty (30) calendar days of the date of the request. Checks should specially identify the Site, the Site's special waste generator (Bureau of Land identification) number contained in the respondent block of this Notice and the Parties' Federal Employer Identification Number and should be addressed to the following:

Illinois Environmental Protection Agency
Fiscal Services, #2
P.O. Box 19276
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

The Parties shall also send a copy of the transmittal letter to the Illinois EPA's project manager identified in Section VII(B) of this Notice.

If any of the Parties fail to remit the requested reimbursement to the Illinois EPA within thirty (30) calendar days of the date of request, the Illinois EPA will assume that the Party refuses to reimburse such costs and the Illinois EPA will proceed accordingly. The Illinois EPA reserves the right to bring an action against any of the Parties pursuant to the Act for recovery of all response and oversight costs incurred by the State of Illinois relative to this Notice as well as any other costs incurred by the State of Illinois relative to response activities conducted pursuant to the Act at the Site for which that Party is liable.

XIV. ANNUAL HAZARDOUS WASTE GENERATOR REPORTS

All hazardous wastes, as defined in Section 3.15 of the Act, 415 ILCS 5/3.15, generated at the Site through activities conducted pursuant to this Notice or any subsequent Notice may be subject to annual reporting requirements pursuant to 35 Ill. Adm. Code 722.141. Hazardous wastes treated, stored or disposed on the Site, or shipped off the Site for storage, treatment, or disposal during any calendar year shall be reported to the Illinois EPA by no later than the first day of March of the following year. Reporting requirements, instructions and current reporting forms are available from the Illinois EPA by contacting the following:

Facility Reporting Unit, #24
Planning and Reporting Section
Bureau of Land
Illinois Environmental Protection Illinois EPA
P.O. Box 19276
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

XV. OTHER CLAIMS

Nothing in this Notice shall constitute or be construed as a release or waiver from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the presence, generation, storage, treatment, handling, transportation, release, management or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

XVI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Notice shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations.

XVII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Notice is the date on which it was posted by Certified Mail to the Parties. Such date is identified below the Director's signature block at the close of this Notice.

This Notice may be amended by the Illinois EPA. Such amendment shall be in writing and shall be effective on the date on which it was posted by Certified Mail to the Parties.

Any reports, plans, specifications, schedules, and attachments required by this Notice are, upon approval by the Illinois EPA, incorporated into the terms and conditions of this Notice. Any non-compliance with such Illinois EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a failure to comply with the terms and conditions of this Notice.

No informal advice, guidance, suggestions, or comments by the Illinois EPA regarding reports, plans, specifications, schedules, or any other documents submitted by the Parties will relieve the Parties of their obligation to obtain such formal approval as may be required by this Notice.

XVIII. PARTIES BOUND

This Notice shall apply to and be binding upon the Parties and their subsidiaries, principals, estates, officers, directors, agents, representatives, successors, and assignees and upon all persons, contractors, subcontractors and consultants acting under or for either the Parties or the Illinois EPA or both. No change in ownership or corporate or partnership status relating to the Site will in any way alter the Parties' responsibility under this Notice. The Parties shall be responsible for carrying out all activities required of the Parties under this Notice.

XIX. FAILURE TO COMPLY WITH THIS NOTICE

Pursuant to Section 22.2(k) of the Act, 415 ILCS 5/22.2 (k), if any Party fails without sufficient cause to perform the identified response action in accordance with the terms and conditions of this Notice, the Party may be liable to the State of Illinois for punitive damages in an amount that is equal to three(3) times the amount of costs incurred by the State of Illinois as the result of that Party's failure to perform the identified response action. Any such punitive damages shall be assessed in addition to costs otherwise recovered from the Parties pursuant to Section 22.2(f) and 58.9 of the Act, 415 ILCS 5/22.2(f) and 415 ILCS 5/58.9, and in addition to any other penalty or relief provided by the Act, 415 ILCS 5/1 et seq., or any other law.

XX. TERMINATION AND SATISFACTION

The provisions of this Notice shall be deemed satisfied upon the Parties receipt of written notice from the Illinois EPA that the Parties have demonstrated, to the satisfaction of the Illinois EPA, that all of the requirements, terms and conditions of this Notice, including any additional tasks which the Illinois EPA has determined to be necessary, have been completed.

By: Mary A. Gade Date: 20 April 1998
Mary A. Gade, Director
Illinois Environmental Protection Agency

Date of Mailing: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath, state that I have served the attached Notice Pursuant to Sections 4(q) and 58.9(b) of the Environmental Protection Act upon the persons to whom it is directed, by placing a copy in envelopes addressed to:

Mr. Robert Brown, Jr.
Registered Agent
Batavia Concrete, Inc.
Route 25 South
P.O. Box 215
Batavia, Il 60510-0215

Mr. Thomas Huiner, President
Batavia Concrete, Inc.
9 S 524 Lorraine
Hinsdale, Il 60521

Mr. Clemens H. Martin. Sr.
Registered Agent and President
Eagle Concrete, Inc.
2240 Persimmon Drive
St. Charles, Il 60174

Mr. Kenneth W. Smudde
Registered Agent
Kapat Industries, Inc.
P.O. Box 187
Batavia, Il 60510-0187

Mr. Kenneth W. Smudde. President
Kapat Industries, Inc
1121 Greenfield Circle
Geneva, Il 60134

Mr. Melvin Johnson
Johnson Excavating Company
37W861 McKee Road
Batavia, Il 60510

and sending them by certified mail. return receipt requested, from Springfield, Illinois on _____, 1998 with sufficient postage affixed.

SUBSCRIBED AND SWORN TO BEFORE ME

this _____ day of _____, 1998.

Notary Public